

NOT FOR PUBLICATION

FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE CHASE MANHATTAN BANK,

Plaintiff,

v.

MONIQUE MCLAUGHLIN, MICHELE
MCLAUGHLIN, EVELYN MCLAUGHLIN, and
UNITED STATES OF AMERICA SMALL
BUSINESS ADMINISTRATION,

Defendants.

Civ. No. 2001-208

MEMORANDUM

I. INTRODUCTION

On June 5, 2003, the Court granted summary judgment in favor of the plaintiff, Chase Manhattan Bank ["plaintiff" or "bank"], and against Defendants Monique McLaughlin, Esq., Michele McLaughlin, and Evelyn McLaughlin. Nineteen days later, Monique McLaughlin, Esq., acting as counsel on behalf of all three defendants, filed a June 24, 2003 "Motion to Set Aside Entry of Summary Judgment and Opposition to Summary Judgment," which plaintiff opposed on July 3, 2003. Monique McLaughlin, Esq., then filed a "Motion to Stay Writ of Execution" on July 18, 2003 which plaintiff opposed. On July 21, 2003, Monique McLaughlin, Esq., subsequently filed a notice of appeal of my June 5, 2003 judgment. On August 28, 2003, the Court of Appeals dismissed the appeal "[p]ursuant to Rule 3(a) of the Federal Rules of Appellate

Procedure and Third Circuit's LAR 3.3 and Misc. 107.1(a)," for appellant's failure to timely prosecute. *Chase Manhattan Bank vs. McLaughlin, et al.*, No. 03-3154 (3d Cir. Aug. 28, 2003) (order dismissing appeal).

Besides Monique McLaughlin, Michele and Evelyn McLaughlin are also parties to the Note and Mortgage. Michele and Evelyn contend that they entered into a verbal agreement with Monique wherein they would each contribute to the downpayment on the subject property and Monique would make all payments on the note and reside on the property. (Michele Aff. ¶¶ 3-4; Evelyn Aff. ¶¶ 3-4.) Michele and Evelyn contend that after the plaintiff instituted this action for debt and foreclosure, Monique promised in March 2002 to take immediate action to reinstate the loan. (*Id.* ¶ 6.) According to Michele and Evelyn, Monique assured them on several occasions that she would take care of the matter. (*Id.* ¶ 10.) Furthermore, Monique failed to respond to Michele and Evelyn's numerous emails asking about the status of the proceedings. (*Id.* ¶ 12.) They further allege that, On July 20, 2003, Monique refused to have any further communication with her clients and cosignatories, Michele and Evelyn. (*Id.* ¶ 12.) Michele and Evelyn claim that it was only on July 21, 2003 that they first discovered (1) that having their sister Monique represent them presented a conflict of interest (2) that Monique

was not a member in good standing with the Virgin Islands Bar and (3) that she had taken no action to prevent the June 5, 2003 judgment of this Court. (*Id.* ¶¶ 9-10.)

On July 31, 2003, defendants Michele and Evelyn McLaughlin gave notice of the substitution of independent counsel on their behalf. On August 15, 2003, defendants Michele and Evelyn filed a "Motion to Set Aside Judgment or for Stay of Execution" under Rules 60 and 62 of the Federal Rules of Civil Procedure along with an accompanying memorandum of even date.

Both Michele and Evelyn contend that "Monique filed a post-judgment Motion for Reconsideration without [their] permission in June 2003." (Evelyn Aff. ¶ 10; Michele Aff. ¶ 10.) Through their new counsel, "Evelyn and Michele voluntarily dismissed the appeal to the Third Circuit Court of Appeals [as to them] filed by Monique." (Defs.' Mem. Mot. Relief J. at 2, n.2.) Defendants Evelyn and Michele also claim they are engaged in serious settlement discussions with the plaintiff. (*Id.* at 3.)

II. DISCUSSION

A. Monique McLaughlin's motions to set aside judgment and for stay of execution are denied

Defendant Monique has presented no basis for me to reconsider the judgement against her, so I will not grant her

motion to set aside under Rule 60(b) or otherwise. Since the defendant only sought a stay pending my ruling on the Rule 60(b) motion, I also decline to stay the execution of the judgment against her.

Treating Monique McLaughlin's June 24, 2003 motion to set aside entry of summary judgment as seeking relief under Federal Rule of Civil Procedure 60, I find no sufficient basis to do so. In asking me to set aside my June 5, 2003 Judgment, she cites a laundry list of "grounds": (1) issues to be resolved which were not mentioned by plaintiff, (2) claims that the other defendant Small Business Administration ["SBA"] would be harmed, (3) claims that defendant SBA and the McLaughlins are presently resolving issues, (4) desire to renegotiate loan with plaintiff, (5) lack of notice and opportunity to respond to plaintiff's motion, and (6) "right" to conduct further discovery. (Defs.' Mot. Set Aside J. at 1-2.) Although Monique McLaughlin asks for relief under Rule 60(b)(1), she fails to state how any of these grounds qualify as mistake, inadvertence, surprise, excusable neglect or any other reason warranting relief from judgment under the Rule. (*Id.* at 2.); Fed.R.Civ.P. 60.

Furthermore, Monique McLaughlin's argument that she never received notice or an opportunity to respond to plaintiff's motion for summary judgment also does not qualify as excusable

neglect under Rule 60(b)(1). For one, plaintiff's counsel has represented that he mailed the motion to Monique McLaughlin on July 12, 2002 and that it was never returned. Plaintiff's notice of the motion was docketed by the Clerk of the Court on July 15, 2002. Plaintiff then filed its motion for summary judgment with the Court on October 21, 2002. Monique McLaughlin moved to set aside the June 5, 2003 judgment only after the clerk of court issued a writ of execution on June 23, 2003. Considering that Monique McLaughlin answered the complaint on May 6, 2002, her failure to inquire about the status of this case for over a year is by no stretch of the imagination excusable neglect. There is no basis here to grant Rule 60(b) relief.

Even assuming that I allowed Monique McLaughlin to oppose the motion for summary judgment anew, her "Opposition to Plaintiff's Motion for Summary Judgment" makes nothing more than vague assertions. She states that there are "genuine issues of material facts regarding fees, insurance, ownership, the unit itself, the condominium association and other condominium owners and present litigation affecting the unit which makes summary judgment unwarranted." (Defs.' Mot. Set Aside at 2.) Monique McLaughlin has not directly disputed the Court's judgment that she defaulted on her note and mortgage with the plaintiff. Further, she has not stated *why* any of these "issues" warrant

further discovery or trial on that issue. As plaintiff states, defendant Monique McLaughlin has not clearly presented any facts that would, "if proven, prevent entry of summary judgment in favor of [plaintiff.]" (Pl.'s Opp. Mot. Set Aside at 4.) Therefore, I will not grant Monique's motion to set aside the June 5, 2003 judgment.

B. Michele and Evelyn McLaughlin's motions to set aside and for stay of execution are also denied

Since Michele and Evelyn McLaughlin's additional arguments also are insufficient, I will not grant their motion to set aside the judgment either. Furthermore, I will not stay the execution of the judgment solely to allow settlement discussions.

Because the defendants never responded to the motion for summary judgment that was granted, I will apply the default judgment standard in deciding whether to set aside the judgment, namely, "(1) whether the plaintiff will be prejudiced by the set aside; (2) whether the defendants have a meritorious defense; and (3) whether culpable conduct on the part of the defendants led to the [judgment]." *Fountain Valley Corp. v. Wells*, 19 V.I. 607 (D.V.I. 1983). Because of the defendant's failure to assert a meritorious defense, I will deny their motion to set aside the judgment.

Even assuming plaintiff would suffer no prejudice,

defendants have not raised a meritorious defense to summary judgment in this motion. A meritorious defense is one that, if established, would constitute a complete defense to the plaintiff's claims. *See id.* Defendants Michele and Evelyn McLaughlin claim merely that they had good reason to believe the note would be paid. Even if this were true, it would not change the reality that the McLaughlins, collectively, failed to keep up the payments on the note. The remainder of defendants' arguments are irrelevant because they address their failure to respond to the motion for summary judgment rather than present the merits of a defense to the suit itself.

With respect to the third factor, Evelyn and Michele McLaughlin contend that they were not culpable for their sister and counsel Monique's failure to file a timely response. They argue that other courts have set aside judgments due to the "inability of a party to communicate with counsel" or for "[g]ross neglect of counsel, coupled with the absence of neglect on the part of the movant" or when "counsel completely refused to respond to inquiries and failed to take appropriate action." (Defs.' Mem. Supp. Mot. Relief J. at 3.) Those cases involved very different facts from the present case. *See United States v. Cirami*, 563 F.2d 26 (2d Cir. 1977) (finding that counsel suffered from a psychological disorder and that the party in no way

neglected their case); *Lucas v. City of Juneau*, 20 F.R.D. 407 (D. Alaska 1957) (refusing to impute negligence of counsel to a hospitalized client); *King v. Mordowanec*, 46 F.R.D. 474 (D.R.I. 1969) (granting 60(b)(6) relief where attorney was grossly negligent in failure to prosecute and client's were free from blame). Even though their former counsel is the most culpable party, I agree with the bank that Michele and Evelyn McLaughlin were also at fault in failing to inquire into the status of these proceedings "after experiencing firsthand their attorney's unreliability and then sending [numerous emails] to that same counsel." (Pl.'s Opp. Mot. Rel. J. at 5.) In any event, the failure of Michele and Evelyn McLaughlin to raise a meritorious defense outweighs this third factor.

Defendants simply have given this Court no reason to believe that its judgment would be different upon reconsideration. They have provided no credible factual basis to excuse or even dispute their default on the note. See *Residential Reroofing Union Local 30-B v. Mezicco*, 55 F.R.D. 516 (E.D. Pa. 1972) (finding that to set aside judgment movant must at least provide a credible factual basis of a meritorious defense). Under this three-pronged analysis, I find that the Rule 60 motion to set aside must be denied.

Defendants also have filed a Rule 62 motion asking to stay

execution in order "to allow the parties to reach an amicable settlement." (Defs.' Mem. Supp. Mot. Relief J. At 5.) Since this is not a valid purpose and Rule 62 is not a vehicle for the requested stay, I will deny the motion.

First, the defendants are free to engage in settlement discussions with the plaintiff irrespective of the pending foreclosure sale of the property on September 23, 2003. Secondly Rule 62 is a vehicle for a stay *pending appeal*. The defendants argue that a four-factor test, should be used to determine whether a stay should be granted "under 62(d)." ((*Id.*) (citing *Pemberton*, 36 V.I. 333, 334 (D.V.I. 1997) (citations omitted))). This test does not apply to this case. Rule 62(d) provides:

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay. . . The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Fed. R. Civ. P. 62(d). Evelyn and Michele have already withdrawn their appeal to the Court of Appeals, (Defs.' Mem. Mot. Relief J. at 2, n.2), and Monique McLaughlin's appeal has been dismissed by the Court of Appeals for failure to timely prosecute. Because no appeal is pending, defendants have no basis to invoke a stay

under Rule 62(d).¹ Furthermore, I can find no other basis on which to exercise my discretion to stay execution on the judgment and I decline to do so.

¹ Even if I were to proceed under Rule 62(d), the defendants have not met their burden of establishing that waiver of a posting of the full supersedeas bond is proper. See *Bank of Nova Scotia v. Pemberton*, 964 F. Supp. 189, 192 (D.V.I. 1997) (this court's holding that it is appellant's burden to demonstrate that posting a full bond is impossible or impracticable).

NOT FOR PUBLICATION FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE CHASE MANHATTAN BANK,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 2001-208
)	
MONIQUE MCLAUGHLIN, MICHELE)	
MCLAUGHLIN, EVELYN MCLAUGHLIN, and)	
UNITED STATES OF AMERICA SMALL)	
BUSINESS ADMINISTRATION,)	
)	
Defendants.)	

ORDER

For the reasons set forth in the accompanying memorandum of even date, it is hereby

ORDERED that Monique McLaughlins' June 24, 2003 "Motion to Set Aside Entry of Summary Judgment and Opposition to Summary Judgment" [docket # 26] pursuant to Rule 60(b)(1) and July 18, 2003 "Motion to Stay Writ of Execution" [docket # 28] are **DENIED;** and it is further

ORDERED that Michele and Evelyn McLaughlins' August 15, 2003
"Motion to Set Aside Judgment or for Stay of Execution" [docket #
36] pursuant Rule 60 and 62 is **DENIED**.

ENTERED this 15th day of September, 2003.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____
Deputy Clerk

Copies to:
Hon. Geoffrey W. Barnard
Monique McLaughlin, Esq.
Richard H. Dollison, Esq.
Gregory Hodges, Esq.
Marcia Waldron, Clerk of the Court, United States Court of
Appeals for the Third Circuit
Wilfredo Morales, Clerk of the Court
Timothy Abraham, Esq.
Ms. Jackson
Order Book

The Chase Manhattan Bank v. Monique McLaughlin et al.
Civ. No. 2001-208
Order
Page 2